

ASSEMBLY BILL

No. 330

Introduced by Assembly Member Norby

February 10, 2011

An act to amend Section 33080.2 of, and to add Sections 33080.9, 33080.10, 33080.11, and 33080.12 to, the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

AB 330, as introduced, Norby. Local agencies: redevelopment.

The Community Redevelopment Law requires every redevelopment agency to present an annual report to its legislative body that includes an independent financial audit report for the previous fiscal year and to inform the legislative body of major audit violations. The failure to correct the major violations may result in the filing of an action by the Attorney General. The Department of Housing and Community Development may examine the records of redevelopment agencies.

This bill would establish a specified procedure by which the department, the Attorney General, and the courts would handle major audit violations. The bill also would authorize the Controller to conduct quality control reviews of independent financial audit reports to the extent it is feasible to do so within existing budgetary resources, and refer suspected violations to the California Board of Accountancy, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33080.2 of the Health and Safety Code
2 is amended to read:

3 33080.2. (a) When the agency presents the annual report to
4 the legislative body pursuant to Section 33080.1, the agency shall
5 inform the legislative body of any major ~~audit~~ violations of this
6 part based on the independent financial audit report *or an audit or*
7 *investigation conducted by the department*. The agency shall inform
8 the legislative body that the failure to correct a major audit
9 violation of this part may result in the filing of an action by the
10 Attorney General pursuant to Section 33080.8.

11 (b) The legislative body shall review any report submitted
12 pursuant to Section 33080.1 and take any action it deems
13 appropriate on that report no later than the first meeting of the
14 legislative body occurring more than 21 days from the receipt of
15 the report.

16 SEC. 2. Section 33080.9 is added to the Health and Safety
17 Code, to read:

18 33080.9. (a) (1) The department shall forward to the Attorney
19 General and the Controller a copy of any audit or investigation of
20 a redevelopment agency conducted pursuant to Section 50464.

21 (2) On or before April 1 of each year, the department shall
22 determine for all audits and investigations conducted the previous
23 year, including those audits and investigations conducted pursuant
24 to Section 50464, whether an audit or investigation contains major
25 audit violations, as defined in subdivision (j) of Section 33080.8.

26 (b) On or before June 1 of each year, the department shall
27 determine for each major audit violation identified pursuant to
28 subdivision (a) if the agency has corrected the major audit
29 violation. Before making this determination, the department shall
30 consult with each affected agency. In making this determination,
31 the department may request and shall receive the prompt assistance
32 of public officials and public agencies, including, but not limited
33 to, the affected agencies, counties, and cities. If the department
34 determines an agency has not corrected the major audit violation,
35 the department shall send a list of those agencies, their major audit
36 violations, all relevant documentation, and the affidavits required
37 pursuant to subdivision (e) to the Attorney General for any action
38 pursuant to this section.

1 (c) For each agency the department refers to the Attorney
2 General pursuant to subdivision (b), the department shall notify
3 the agency and its legislative body that the agency was on the list
4 sent to the Attorney General. The notice shall inform the agency
5 and its legislative body of the duties imposed pursuant to Section
6 33080.2.

7 (d) The Attorney General shall determine whether to file an
8 action to compel the agency's compliance with this article within
9 45 days of receiving notice from the department regarding major
10 audit violations. Any action filed pursuant to this section shall be
11 commenced in the County of Sacramento. The time limit for the
12 Attorney General to make this determination is directory and not
13 mandatory.

14 (e) Any action shall be accompanied by the affidavit or affidavits
15 setting forth the facts that demonstrate a likelihood of success on
16 the merits of the claim that the agency has a major audit violation.
17 The affidavit also shall certify that the agency and its legislative
18 body were notified of the action no less than 10 days prior to the
19 date on which the action was filed. The agency shall file a response
20 to any action filed by the Attorney General pursuant to this section
21 within 15 days of service.

22 (f) Nothing in this section shall be construed to permit the
23 department to initiate or settle litigation, or to resolve any
24 departmental audit or investigation in a manner contrary to law.

25 SEC. 3. Section 33080.10 is added to the Health and Safety
26 Code, to read:

27 33080.10. In an action to compel an agency's compliance with
28 this article pursuant to Section 33080.9, all of the following apply:

29 (a) (1) On the earliest day that the business of the court will
30 permit, but no later than 45 days after the filing of an action, the
31 court shall conduct a hearing to determine if good cause exists for
32 believing the agency has a major audit violation, as defined in
33 subdivision (j) of Section 33080.8, and has not corrected the major
34 audit violation.

35 (2) If the court determines that no major audit violation exists
36 or that the agency had a major audit violation and has corrected
37 the major audit violation, the court shall dismiss the action.

38 (3) If the court determines there is good cause to believe the
39 agency had a major audit violation and has not corrected that major
40 audit violation, the court shall set a hearing on the matter within

60 days. The court also shall issue immediately an order that prohibits the agency doing any of the following:

(A) Encumbering any funds or expending any money derived from any source, other than a Low and Moderate Income Housing Fund, except to pay the obligations designated in subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (e) of Section 33334.12.

(B) Adopting a redevelopment plan.

(C) Amending a redevelopment plan, except to correct the major audit violation that is the subject of the action.

(D) Issuing, selling, offering for sale, or delivering any bonds or any other evidence of indebtedness, except to increase, improve, or preserve, or assist in the construction or rehabilitation of, housing units that will be occupied by and affordable to persons or families of extremely low, very low, low, or moderate income, in accordance with this part.

(E) Incurring any indebtedness, except to increase, improve, or preserve, or assist in the construction or rehabilitation of, housing units that will be occupied by and affordable to persons or families of extremely low, very low, low, or moderate income, in accordance with this part.

(b) If a court finds, on the basis of the subsequent hearing set pursuant to paragraph (3) of subdivision (a), that the agency has a major audit violation and has not corrected the major audit violation, the court shall order the agency to comply with this article within 30 days and order the agency to forfeit to the state no more than any of the following, as applicable:

(1) Two thousand dollars (\$2,000) in the case of an agency with total revenue in the prior year of at least one hundred thousand dollars (\$100,000) as reported in the Controller's annual financial reports.

(2) Five thousand dollars (\$5,000) in the case of an agency with total revenue in the prior year of at least one hundred thousand dollars (\$100,000) but less than two hundred fifty thousand dollars (\$250,000) as reported in the Controller's annual financial reports.

(3) Ten thousand dollars (\$10,000) in the case of an agency with total revenue in the prior year of at least two hundred fifty thousand dollars (\$250,000) as reported in the Controller's annual financial reports.

1 (c) The order issued by the court pursuant to paragraph (3) of
2 subdivision (a) shall continue in effect until the court determines
3 the agency has corrected the major audit violation. If the court
4 determines that the agency has corrected the major audit violation,
5 the court may dissolve its order at any time.

6 (d) An action filed pursuant to this section is in addition to any
7 other remedy and is not an exclusive means to compel compliance.
8 This section is not intended to preclude an action to compel
9 compliance with this article by any other interested party or resident
10 of the jurisdiction.

11 SEC. 4. Section 33080.11 is added to the Health and Safety
12 Code, to read:

13 33080.11. (a) The Controller may conduct quality control
14 reviews of independent financial audit reports required by Section
15 33080.1 to the extent it is feasible to do so within existing
16 budgetary resources. The Controller shall communicate the results
17 of his or her reviews to the independent auditor and the agency
18 for which the audit was conducted, and shall review his or her
19 findings with the independent auditor.

20 (b) If the quality control review indicates the audit was
21 conducted in a manner that may constitute unprofessional conduct,
22 as defined in Section 5100 of the Business and Professions Code,
23 including, but not limited to, gross negligence resulting in a
24 material misstatement in the audit, the Controller shall refer the
25 case to the California Board of Accountancy. If the California
26 Board of Accountancy determines that the independent auditor
27 conducted an audit in an unprofessional manner, the independent
28 auditor is prohibited from performing any redevelopment agency
29 audit for a period of three years, in addition to any other penalties
30 the California Board of Accountancy may impose.

31 SEC. 5. Section 33080.12 is added to the Health and Safety
32 Code, to read:

33 33080.12. (a) Whenever the Controller determines through
34 two consecutive quality control reviews, pursuant to Section
35 33080.11, that audits performed by an independent auditor pursuant
36 to Section 33080.1 were not performed in substantial conformity
37 with provisions of the audit and report guidelines adopted pursuant
38 to Section 33080.3, the Controller shall notify in writing the
39 independent auditor and the California Board of Accountancy. If
40 the independent auditor does not file an appeal in writing to the

1 California Board of Accountancy within 30 calendar days after
2 receipt of the Controller's notification, the Controller's
3 determination under this section shall be final.

4 (b) If an appeal is filed with the California Board of
5 Accountancy, the board shall complete an investigation of the
6 appeal. On the basis of the investigation, the board may do any of
7 the following:

8 (1) Find the Controller's determination should not be upheld
9 and has no effect.

10 (2) Schedule the appeal for a hearing.

11 (c) If the Controller's determination pursuant to subdivision (a)
12 becomes final, the independent auditor shall be ineligible to
13 conduct audits pursuant to Section 33080.1 for a period of three
14 years, or, in the event of an appeal, for any period and subject to
15 conditions that may be ordered by the California Board of
16 Accountancy. No later than March 1 following the date on which
17 the Controller's determination becomes final, the Controller shall
18 notify each agency of those independent auditors determined to
19 be ineligible under this section or Section 33080.11. Agencies
20 shall not use the audit services of an independent auditor ineligible
21 under this section.

22 (d) For the purposes of this section, "independent auditor" shall
23 mean any person or firm entering into a contract to conduct an
24 audit under Section 33080.1.

25 (e) This section shall not preclude the California Board of
26 Accountancy from taking any disciplinary action it deems
27 appropriate under other provisions of law.